

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LARRY and AMBER AIKEN,

Plaintiffs,

v.

DOUGLAS COUNTY and DAN
LAROCHÉ in his capacity as
FORMER SHERIFF OF DOUGLAS
COUNTY,

Defendants.

No. CV-07-068-LRS

**ORDER GRANTING
DEFENDANTS' MOTIONS
FOR SUMMARY JUDGMENT,
*INTER ALIA***

On August 1, 2008, Defendants filed two motions for summary judgment: A Motion For Summary Judgment Re Federal Law Claims (Ct. Rec. 20) and a Motion For Summary Judgment Re State Law Claims (Ct. Rec. 23). These motions were noted for hearing without oral argument on October 6, 2008.¹

Plaintiff has not filed a response to either of these motions. Responses were due no later than August 15, 2008. LR 7.1(c) (11 calendar days for a response computed from August 4, 2008 pursuant to Fed. R. Civ. P. 6(d) adding three days where service is by electronic means). There is no stipulation or order of record

¹ Effective July 10, 2008, hearing on summary judgment motions must be noted at least 50 days after filing of the motion. LR 7.1(h)(1).

1 extending the response time. As such, this court need not wait until October 6 to
2 dispose of this matter.

3 A failure to timely file a memorandum of points and authorities in
4 opposition to any motion may be considered by the court as consent on the part of
5 the party failing to file such memorandum to the entry of an order adverse to the
6 party in default. LR 7.1(h)(5). Furthermore, pursuant to LR 56.1(d), in
7 determining any motion for summary judgment, the court may assume the facts
8 claimed by the moving party are admitted to exist except as and to the extent such
9 facts are controverted by a statement of material facts filed by the non-moving
10 party. Plaintiffs, the non-moving parties, have not filed a statement of material
11 facts.

12 Based on LR 7.1(h)(5) and the uncontroverted statement of material facts
13 (Ct. Rec. 26)² and memoranda of points and authorities (Ct. Rec. 21 and 24) filed
14 by the Defendants, said Defendants' Motions For Summary Judgment (Ct. Rec. 20
15 and 23) are **GRANTED**. The undisputed facts establish as a matter of law that
16 Defendant LaRoche's termination of Plaintiff Larry Aiken's employment was not
17 in retaliation for Plaintiff's exercise of First Amendment rights (i.e., Plaintiff's
18 support of candidates opposing LaRoche in elections for the Sheriff's office did
19 not motivate the termination) and therefore, was not in violation of the public
20 policy of the State of Washington. In turn, the court must find as a matter of law
21 that Plaintiff's termination does not constitute "outrageous" conduct (intentional
22 infliction of emotional distress), nor does it constitute a breach of duty which must
23 be established in order to support a claim for negligent infliction of emotional
24 distress. Defendants are awarded judgment on all of the federal and state law
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27 ² As supported by the Declaration of Dan LaRoche (Ct. Rec. 28) and
28 exhibits attached thereto.

1 claims set forth in Plaintiffs' complaint.

2 The telephonic status conference scheduled for September 19, 2008 is
3 **VACATED.**

4 **IT IS SO ORDERED.** The District Executive is directed to enter judgment
5 accordingly and forward copies of the judgment and this order to counsel of
6 record. This file shall be closed.

7 **DATED** this 12th of September, 2008.

8 *s/Lonny R. Suko*

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LONNY R. SUKO
United States District Judge